

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

2004 FEB -5 P 12:39  
CIVIL ACTION NO.

03-12551-NG  
DISTRICT OF MASS.

FRANK SACO  
Plaintiff,

VS.

TUG TUCANA and  
TUG TUCANA CORPORATION  
Defendants.

DEFENDANT, TUG TUCANA CORPORATION'S  
ANSWER TO PLAINTIFF'S COMPLAINT

Now comes the defendant, Tug Tucana Corporation, in the above entitled action, by and through its undersigned counsel, Clinton & Muzyka, P.C., and submits its Answer to Plaintiff's Complaint as follows:

THE PARTIES

1. The defendant admits that the plaintiff was serving as a member of the crew of the TUG TUCANA, but is without personal knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 1 and therefore denies same.
2. The defendant admits the allegations in Paragraph 2.

JURISDICTION

The defendant admits the allegation of jurisdiction in this paragraph.

FACTUAL ALLEGATIONS

3. The defendant admits that the plaintiff was serving as a member of the crew of the TUG TUCANA, but is without personal knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 3 and therefore denies same.

COUNT I  
(Jones Act)

4. The defendant reiterates and reaffirms its answers to the allegations set forth in Paragraphs 1 through 3 inclusive and incorporates same as if fully set forth herein.
5. The defendant denies the allegations contained in Paragraph 5, together with subparts a) through e) inclusive.
6. The defendant is without personal knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 and therefore denies same.

7. Paragraph 7 contains allegations of law to which a response is not required, but to the extent that a response is required, the defendant denies all the allegations contained therein.

**REQUEST FOR RELIEF**

**WHEREFORE** the defendant prays that this Honorable Court dismiss Count I of Plaintiff's Complaint together with costs and reasonable attorneys fees.

**COUNT II**  
**GENERAL MARITIME LAW**  
**(Unseaworthiness)**

8. The defendant reiterates and reaffirms its answers to the allegations set forth in Paragraphs 1 through 7 inclusive and incorporates same as if fully set forth herein.
9. The defendant denies the allegations contained in Paragraph 9.
10. The defendant is without personal knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 and therefore denies same.
11. Paragraph 11 contains allegations of law to which a response is not required, but to the extent that

a response is required, the defendants deny all the allegations contained therein.

**REQUEST FOR RELIEF**

**WHEREFORE** the defendant prays that this Honorable Court dismiss Count II of Plaintiff's Complaint together with costs and reasonable attorneys fees.

**COUNT III**  
**(Maintenance and Cure)**

12. The defendant reiterates and reaffirms its answers to the allegations set forth in Paragraphs 1 through 11 inclusive and incorporates same as if fully set forth herein.
13. The defendant denies the allegations contained in Paragraph 13.

**REQUEST FOR RELIEF**

**WHEREFORE** the defendant prays that this Honorable Court dismiss Count III of Plaintiff's Complaint together with costs and reasonable attorneys fees.

**AFFIRMATIVE DEFENSES**

Now comes the defendant and incorporates the following Affirmative Defenses into each Count of its Answer as more fully appears below.

**AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE**, the defendant states that the plaintiff has failed to state a cause of action upon which relief can be granted under the **Count III**.

**AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE**, the defendant states that, if the injury occurred, which is specifically denied, the plaintiff has reached maximum medical improvement for the condition which he allegedly sustained onboard the vessel and therefore is now beyond the defendant's responsibility for maintenance and cure.

**AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE**, the defendant states that if the plaintiff sustained personal injuries as alleged, which is specifically denied, it was due to the action and/or omissions of individuals for whom the defendant is not legally responsible.

**AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE**, the defendant states that if the plaintiff sustained injury as alleged, which is specifically denied, those injuries were the result of an Act of God for which the defendant is not legally responsible.

**AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE**, the defendant states that if the plaintiff was

injured as alleged, which is specifically denied, it was due in whole or in part to the plaintiff's own negligence and failure to exercise the degree of care, skill, and knowledge in the performance of his work reasonably to be required of a seaman of the plaintiff's experience and not due to any negligence or fault on the part of the defendant nor any person or persons for whom the defendant may be legally responsible.

**AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE**, the defendant states that if the plaintiff was injured as alleged, which is specifically denied, such injury was without the fault, knowledge, or privity of the defendant; that the damages claimed herein exceed the value of the vessel, including her pending freight; and the defendant herewith claims benefit of any and all laws and statutes of the United States of America, including but not limited to, Limitation of Liability of the defendant, 46 USCA, Appx. § 183 (b).

**AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE**, the defendant states that the plaintiff is not entitled to maintenance because it has been fully satisfied.

**AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE**, the defendant states that the plaintiff is not entitled to cure because it has been fully satisfied.

AND FURTHER ANSWERING, AND AS A COMPLETE AND SEPARATE DEFENSE, the defendant states that its responsibility for payment of maintenance and cure ceases because the plaintiff is eligible for Medicare or Medicaid.

WHEREFORE, the defendant prays that the above Complaint be dismissed together with costs and reasonable attorney's fees.

By its attorneys,

*Cristen Cozart Lebel*

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by: hand, mail, overnight mail, facsimile, on 2-4-04

*Cristen Cozart Lebel*